

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.249 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

Indrajit Upadhyay, son of Radha Krishna Upadhyay @ Radha Kishun Upadhyay, resident of Village - Pakaria, P.S.- Shivsagar, District - Rohtas.
..... Petitioner

Versus

- 1. The State of Bihar.
- 2. The Principal Secretary, Department of Home, Bihar, Patna.
- 3. The Director General of Police, Bihar, Patna.
- 4. The Inspector General, Prison, Bihar, Patna.
- 5. The Assistant Inspector General, Prison, Bihar, Patna.
- 6. The State Sentence Remission Board through I.G. Prison, Bihar, Patna.
- 7. The Jail Superintendent, Mandal Kara, Sasaram, Rohtas.

..... Respondents

Appearance :

For the Petitioner : Mr. Ratnakar Pandey, Advocate
For the Respondents : Mr. Prabhu Narayan Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 28-02-2017

Heard learned counsel for the petitioner and learned counsel for the State.

2. The grievance of the petitioner is that even though in terms of the Government Policy and Regulations referable to Section 432 of the Code of Criminal Procedure, father of the petitioner was entitled to be released from custody where he is serving the sentence of life imprisonment, he has not been released though other co-convicts similarly situated have already been released.

3. A counter affidavit has been filed on behalf of the respondent State bringing on record that the State Sentence Remission Board



considered the case of the father of the petitioner on 17.02.2017 but was unable to proceed inasmuch as the opinion of the trial court, as required under Section 432(2) of the Cr.P.C., was inconclusive. It appears that on 04.06.2016 the Additional District and Sessions Judge-IV, In-Charge, Rohtas at Sasaram had sent its report. He was immediately informed that this was not in accordance with law. He again sent the opinion on 10.06.2016 virtually stating that his opinion was in accordance with the orders of the Hon'ble Apex Court in the case of **Union of India Vs. V Sriharan @ Murugan & Others** without even verifying that what he had stated earlier was based on the interim directions issued by the Apex Court in that case and that too over a year back. The said case had already been finally disposed of by the Apex Court 02.12.2015 since reported in **(2016) 7 SCC 1**. Only if the learned trial court had seen Section 432 Cr. P.C., he would not have wasted his time, time of the Board and the time of this Court. Thus, we do not fault the Board in again returning the matter for opinion.

4. However, we first wish to point out that this report of the trial court was sent to the Board on 10.06.2016. It is being taken up by the Board in its meeting on 17.02.2017 i.e. after eight months. Why and where was the delay? We are dealing with a person's liberty. We are sure that in between June, 2016 and February, 2017, the Board must have met at least 4 or 5 times. Why was this matter left out? The office of the Board must take the matter seriously and look into it so as to stop inappropriate practices developing in the matter. In a few cases, we have already noticed that while referring the matter to the Board, there are lots of questions being raised. We hope that the Board would take remedial measures in this regard.



5. We would therefore direct the State Sentence Remission Board to send a copy of this order to the trial court and immediately seek the opinion of the trial court and reconsider the matter at the earliest.

6. With the aforesaid observation and direction, this writ petition stands disposed of.

(Navaniti Prasad Singh, J)

B.T/Ibrar

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
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